



Entered on Docket
February 28, 2008

Hon. Linda B. Riegler
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegler

**STIPULATION AND
CONFIDENTIALITY ORDER**

RECITALS

1 WHEREAS the USACM Liquidating Trust ("the Trust"), the duly authorized successor to
2 USA Commercial Mortgage Company, seeks documents and examination testimony from Nevada
3 State Bank ("NSB") pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure to
4 investigate potential assets and liabilities of the Debtor;
5

6 WHEREAS NSB believes that some of the documents and information exchanged may
7 contain (1) confidential financial or personal data; and/or (2) trade secrets or other confidential
8 and proprietary research, development or commercial information within the meaning of F.R.C.P.
9 45(c)(3)(B)(i) as incorporated through Rule 9016 of the Federal Rules of Bankruptcy Procedure or
10 under other provisions of applicable federal and state law;
11

12 WHEREAS the Trust and NSB have agreed that any confidential documents and
13 information that NSB produces to the Trust shall be kept confidential pursuant to the terms of this
14 Stipulation and Confidentiality Order (hereinafter "Order");
15

16 The Trust and NSB, by and through their respective counsel of record, hereby stipulate
17 and agree to be bound by the following terms of this Order, as approved by the Court.
18

19 1. NSB may designate as confidential any documents or other material produced,
20 furnished, authored, generated or originated by NSB, or testimony related thereto, which it
21 contends in reasonable good faith is confidential, by marking such documents, material or
22 testimony with the word "CONFIDENTIAL." Examination or deposition testimony may be
23 designated CONFIDENTIAL by oral statement on the record at the examination or deposition by
24 NSB or by written statement thereafter, in the manner described below. If portions of testimony
25 are designated CONFIDENTIAL during the examination or deposition, the transcript of the
26 designated testimony shall either be bound in a separate volume and marked "CONFIDENTIAL,"

1 or the confidential designations by page and line reference shall be affixed to the cover of the
2 transcript. NSB may designate portions of transcripts as CONFIDENTIAL after the examination
3 or deposition by written notice to the reporter and to all counsel of record within ten (10) days
4 after such transcript is received by NSB's counsel, after which time all counsel receiving the
5 transcript shall be responsible for marking copies of the designated transcript in their possession
6 or under their control as directed by NSB. During this ten (10) day designation period, all parties
7 shall treat the transcript as if it had been designated CONFIDENTIAL. The provisions of this
8 Order shall be applicable to any documents, material or testimony designated
9 "CONFIDENTIAL," which is not de-designated by the parties' agreement or by subsequent court
10 order (hereinafter "Confidential Information").
11

12 2. Except as hereinafter provided, Confidential Information shall be used by the Trust
13 only in the above-captioned bankruptcy action (the "Bankruptcy Action") and any related
14 proceedings (including bankruptcy court, district court, and appellate proceedings arising in,
15 arising under, or deemed related to this Bankruptcy Action) for purposes necessary to the Trust's
16 investigations, or to prosecute or defend potential claims of the Debtors. Confidential Information
17 shall not be used for any other commercial, business, competitive or other purposes, except that
18 the Trust may use Confidential Information to prosecute any potential claims the Debtors may
19 have, if and when the Trust determines the Debtors have such claims.
20

21 3. If the Trust objects to the designation of any material as CONFIDENTIAL, the
22 Trust will meet and confer with NSB in an effort to resolve the dispute. NSB may decide to
23 remove the CONFIDENTIAL designation in a written statement to the Trust. If the meet and
24 confer process does not resolve the dispute, however, the Trust may apply to the Bankruptcy
25 Court for an order removing the CONFIDENTIAL designation. The contested information shall
26

1 retain its confidential status pending resolution of the dispute. Upon resolution of the dispute, the
 2 prevailing party may recover its attorney's fees and costs from the opposing party.

3 4. All Confidential Information filed with the Court shall be filed in sealed envelopes
 4 bearing the caption of this action, a brief description of the nature of the contents of the sealed
 5 envelope, the word "CONFIDENTIAL" and a statement in substantially the following form:

6 "THIS ENVELOPE IS SEALED PURSUANT TO ORDER OF
 7 THE COURT AND CONTAINS CONFIDENTIAL
 8 INFORMATION, AND IS NOT TO BE OPENED OR THE
 9 CONTENTS THEREOF TO BE DISPLAYED OR REVEALED
 10 BY ANYONE EXCEPT UPON ORDER OF THE COURT."

11 5. Unless otherwise required by law or court order, Confidential Information may be
 12 disclosed only to the Court; court personnel; court reporters and video personnel recording
 13 depositions where Confidential Information is disclosed; counsel for the Trust or other party and
 14 its counsel subject to a joint prosecution agreement with the Trust; support staff and agents of the
 15 Trust, its counsel, or other party and its counsel subject to a joint prosecution agreement with the
 16 Trust (e.g., paralegals, secretaries, law clerks, internal or external copying services); and to
 17 "Qualified Persons," defined as follows:

- 18 (a) Individuals at the Trust and its counsel with responsibility for
 19 overseeing the activities of the Trust and/or its counsel in
 connection with litigation and investigation matters.
- 20 (b) Expert witnesses or consultants retained by the Trust, or its counsel.
- 21 (c) Witnesses during examinations or depositions.
- 22 (d) Any party and its counsel subject to a joint prosecution agreement
 with the Trust.

23 6. Before receiving any Confidential Information, a Qualified Person shall evidence
 24 his or her agreement to be bound by the provisions of this Order by executing a copy of the Non-
 25 Disclosure Certificate attached hereto as Exhibit A.
 26

1 7. In the event NSB elects to produce documents for inspection and the Trust desires
2 to inspect them before designating them for copying, NSB need not mark the documents in
3 advance of any such inspection. For purposes of the inspection, and any subsequent inspection of
4 the original documents, all documents produced for inspection shall be treated as if they were
5 marked "CONFIDENTIAL." Thereafter, upon selection of specified documents for copying by
6 the Trust, NSB may mark copies of such documents with the appropriate confidentiality
7 designation at the time the copies are produced to the Trust.

8 8. Within 60 days of the final determination of this Bankruptcy Action, including any
9 appeal, any person who is in possession of Confidential Information shall return such Confidential
10 Information to NSB or the NSB's counsel, or shall destroy it. Written confirmation of such return
11 or destruction shall be forwarded to NSB or the NSB's counsel. Notwithstanding this provision,
12 however, Confidential Information that (1) has been filed in pleading files maintained by the
13 Trust's counsel, or (2) is mentioned in notes, memoranda or other writings prepared by the Trust's
14 counsel and covered by the work product doctrine, need not be returned or destroyed.

15 9. If a document, other material or testimony related thereto that NSB intends to
16 designate as CONFIDENTIAL, is inadvertently disclosed without being marked as
17 CONFIDENTIAL in accordance with paragraphs 1 through 3 of this Order, the failure to so mark
18 the document, other material or testimony shall not be deemed a waiver of its confidentiality.

19 10. If any document or other material subject to any privilege or legal prohibition
20 against disclosure is inadvertently disclosed, the fact of the disclosure shall not constitute a waiver
21 of the applicable privilege or legal prohibition against disclosure. Upon prompt written
22 notification by NSB, the person to whom the material was disclosed shall either (a) immediately
23 return or destroy it, including any copies thereof, to NSB, and shall destroy any notes or work
24
25
26

1 product concerning the material; or (b) if the person to whom such document or material was
2 inadvertently disclosed disagrees with NSB's claim of privilege or legal prohibition against
3 disclosure, the person shall not use such documents or materials until allowed to do so by Court
4 order. In any such dispute, NSB shall have the burden of making the motion to establish it is
5 entitled to its return. During any such dispute, the Trust is authorized to provide a copy of the
6 document subject to dispute to the court under seal for purposes of a court determination as to
7 whether or not the claimed privilege applies to the document.

8
9 11. If the Trust inadvertently discloses a privileged or confidential document, the Trust
10 will make a good faith effort of recovering such document from the person to whom the document
11 was inadvertently disclosed.

12 12. This Order is entered without prejudice to the right of NSB to use any Confidential
13 Information designated by NSB in any manner NSB deems appropriate.

14
15 13. Prior to the disclosure of any Confidential Information in open court at any hearing
16 in this Bankruptcy Action, counsel who desire to disclose such Confidential Information shall take
17 reasonable steps to afford the NSB's counsel the opportunity to object to disclosure of
18 Confidential Information in open court.

19
20 14. This Order shall survive the final conclusion of this Bankruptcy Action and shall
21 continue in full force and effect. The Court shall retain jurisdiction over the parties, and any other
22 person bound by this Order, to enforce this order.

23 15. Nothing in this Order shall be deemed to preclude NSB from obtaining, on an
24 appropriate showing, additional protection with respect to the confidentiality of any Confidential
25 Information produced in discovery in this action, or other modification of this Order. The entry of
26

1 this Order shall neither constitute nor be used as a basis for a finding that NSB or the Trust has
2 waived any objections that it may have to the use, relevance, or admissibility of any Information.

3 16. The production of any document or other information during discovery in this
4 action, which absent such production would have been in whole or in part privileged under the
5 attorney-client privilege, work-product privilege, or any other applicable privilege, will not
6 release or waive the attorney-client privilege, work-product privilege, or other applicable privilege
7 as to any documents and other information not produced, regardless of its subject matter. The
8 inadvertent or unintentional production by NSB of any privileged or otherwise protected
9 information shall not be deemed a waiver or an impairment of any claim of privilege or
10 protection, including without limitation the attorney-client privilege or the protection afforded by
11 the attorney work-product doctrine.
12


13 17. Nothing in this Order releases NSB from its obligations to produce a privilege log
14 with respect to the documents that it claims to be protected by the attorney-client privilege.
15

16 18. Execution of this Order shall not prevent a party to this action from seeking, upon
17 application to the Court on ten (10) business days notice, to modify this Order for good cause
18 shown or from seeking such other relief upon good cause shown as may become appropriate or
19 necessary.
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21 Dated: February 27, 2008.
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1
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17 *Counsel for Nevada State Bank*

ORDER

18 Based upon the foregoing stipulation of the parties, and good cause appearing therefore, IT
19 IS SO ORDERED.

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

USA CAPITAL FIRST TRUST DEED FUND,
LLC,

USA SECURITIES, LLC,

Debtors.

Case Nos. BK-S-06-10725-LBR; BK-S-
06-10726-LBR; BK-S-06-10727-LBR;
BK-S-06-10728-LBR; BK-S-06-10729-
LBR

Chapter 11

Jointly Administered Under Case No.
BK-S-06-10725-LBR

NON-DISCLOSURE CERTIFICATE

I certify my understanding that access to materials designated as "CONFIDENTIAL" is provided to me pursuant to the terms and restriction of a Stipulation and Confidentiality Order entered by the Court on _____, 2008 (the "Order"). I certify that I have been given a copy of, and have read, the Order and agree to comply with its terms. I understand that the contents of any material designated "CONFIDENTIAL," and any notes or other memoranda or any other forms of information which copy or disclose material designated "CONFIDENTIAL," shall not be disclosed to anyone other than in accordance with the Order and shall be used only for the purposes set forth therein.

I agree to be subject to the jurisdiction of this Court for purposes of enforcement of this Non-Disclosure Certificate and the Order.

By: _____

Title: _____

Representing: _____

Date: _____